HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

H.B. NO. 2668

A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

REPORTS ON PRESCRIPTION DRUGS FOR DIABETES

§ -1 Definitions. As used in this chapter, unless the context requires otherwise:

"Accident and health or sickness insurance" shall have the same meaning as defined in section 431:1-205.

"Department" means the department of health.

"Health care facility" shall have the same meaning as defined in section 323D-2.

"Health care provider" shall have the same meaning as defined in section 323D-2.

"Health maintenance organization" shall have the same meaning as defined in section 432D-1.

"Insurance producer" shall have the same meaning as defined in section 431:9A-102.

"Lobbyist" shall have the same meaning as defined in section 97-1.

"Manufacturer" means a person or entity that produces, prepares, processes, or otherwise manufactures a prescription drug.

"Mutual benefit society" shall have the same meaning as defined in section 432:1-104(2).

"Pharmaceutical sales representative" means a person who markets prescription drugs to health care providers, pharmacies, health care facilities, or insurance producers in the State.

"Pharmacy" means a place of business operating as a pharmacy as permitted under chapter 461.

"Pharmacy benefit manager" shall have the same meaning as defined in section 431R-1.

"Prescription drug" shall have the same meaning as defined in section 328-1.

"Wholesale acquisition cost" means the manufacturer's list price for a prescription drug to wholesalers or direct purchasers in the United States, not including any discounts,

rebates, or reductions in price, as reported in wholesale price guides or other publications of prescription drug pricing data.

§ -2 Department list; essential prescription drugs. On or before February 1 of each year, the department shall compile and publish on its website:

(1) A list of prescription drugs marketed for sale in the State that the department determines to be essential for treating diabetes and the wholesale acquisition cost of each; provided that the list shall include insulin and biguanides; and

(2) A list of prescription drugs described in paragraph (1) that have been subject to an increase in the wholesale acquisition cost of a percentage equal to, or greater than:

(A) The percentage increase in the medical care component of the United States Department of Labor Consumer Price Index during the immediately preceding calendar year; or

(B) Twice the percentage increase in the medical care component of the United States Department of

Labor Consumer Price Index during the immediately preceding two calendar years.

§ -3 **Manufacturer report; costs.** On or before April 1 of each year, the manufacturer of a prescription drug listed pursuant to section -2(1) shall submit to the department, in the form prescribed by the department, a report that includes the following information for the preceding year:

(1) The cost of producing the prescription drug;

(2) Total administrative expenditures relating to the drug, including marketing and advertising costs;

(3) The manufacturer's profit earned from the sale of the prescription drug and the percentage of the manufacturer's total profit attributable to sales of the drug for the period during which the manufacturer has marketed the drug for sale in the State;

(4) The total amount of financial assistance that the manufacturer has provided through any patient prescription drug assistance program;

(5) Costs associated with coupons provided directly to consumers and other programs to assist consumers in paying copayments, and the cost to the manufacturer

attributable to the redemption of those coupons and the use of those programs;

(6) The wholesale acquisition cost of the prescription drug;

(7) A history of any increases in the wholesale acquisition cost of the prescription drug over the five years immediately preceding the date of the report, including the amount of each increase expressed as a percentage of the total wholesale acquisition cost of the drug, the month and year in which each increase became effective, and any explanation for the increase;

(8) The aggregate amount of all rebates that the manufacturer has provided to pharmacy benefit managers for sales of the prescription drug in the State; and

(9) Any additional information required by the department that is necessary to analyze the cost and cost trends of the listed prescription drugs and rebates available for those drugs.

§ -4 Manufacturer report; increased wholesale acquisition costs. On or before April 1 of a year in which a

prescription drug is listed pursuant to section -2(2), the manufacturer of the drug shall submit to the department a report describing the reasons for the increase in the wholesale acquisition cost of the drug. The report shall include:

(1) Factors that contributed to the increase and the percentage of the total increase that is attributable to each factor;

(2) An explanation of the role of each factor in the increase; and

(3) Any other information required by the department.

§ -5 Pharmacy benefit manager; report. (a) Except as otherwise provided in subsection (b), on or before April 1 of each year, a pharmacy benefit manager shall submit to the department a report that includes:

(1) The total amount of all rebates that the pharmacy benefit manager negotiated with manufacturers during the immediately preceding calendar year for prescription drugs listed pursuant to section -2(1) and sold or otherwise distributed in the State;

(2) The total amount of all rebates described in paragraph (1) that were retained by the pharmacy benefit manager; and

(3) The total amount of all rebates described in paragraph (1) that were negotiated for purchases of drugs for use by residents of the State who receive health insurance coverage through:

(A) Medicare;

(B) Medicaid or med-QUEST;

(C) A governmental entity other than the Centers for Medicare and Medicaid Services;

(D) A third party that is not a government entity; and

(E) A plan described in subsection (b) to the extent required by a contract as described in subsection (c).

(b) Except as otherwise provided in subsection (c), this section shall not apply to the coverage of prescription drugs under a plan that is subject to the federal Employee Retirement Income Security Act of 1974, as amended, or any information relating to coverage under that act.

(c) Notwithstanding any provision to the contrary, a plan that is exempt from this section under subsection (b) may, by contract, require a pharmacy benefit manager to comply with this section.

§ -6 Department analysis and report. (a) On or before June 1 of each year, the department shall analyze the information submitted pursuant to sections -3, -4, and -5 and publish a report on its website that includes:

(1) The current price listed pursuant to section -2;

(2) The stated reasons for any increases in the prices of the drugs; and

(3) The effect of the drug prices on overall spending on prescription drugs in the State.

(b) The department's report may include opportunities for persons and entities in this State to lower the cost of prescription drugs for the treatment of diabetes while maintaining patient access to those drugs.

§ -7 Pharmaceutical sales representatives; reporting requirements. (a) On or before June 1 of each year, the manufacturer of a prescription drug listed pursuant to section -2(1) shall provide the department with a list of all

pharmaceutical sales representatives who are engaged on behalf of the manufacturer in the marketing of any of the prescription drugs to any:

(1) Health care provider;

(2) Pharmacy;

(3) Health care facility; or

(4) Insurance producer of policies, contracts, or plans with accident and health or sickness insurers, mutual benefit societies, and health maintenance organizations;

in the State.

(b) The department shall provide electronic access to the most recent list of pharmaceutical sales representatives under subsection (a).

(c) A person who is not included on a current list submitted pursuant to subsection (a), shall not market or sell a prescription drug listed under section -2(1) on behalf of the respective manufacturer to any:

(1) Person or entity listed under subsection (a)(1) to (4); or

(2) Resident of the State.

(d) On or before August 1 of each year, a pharmaceutical sales representative listed pursuant to subsection (a) shall submit to the department a report for the immediately preceding calendar year that includes:

(1) Persons or entities listed under subsection (a)(1) to (4) to whom the pharmaceutical sales representative provided:

(A) Any type of compensation with a value that exceeds ten dollars; or

(B) Total compensation with a value that exceeds one hundred dollars in aggregate; and

(2) The name and manufacturer of any prescription drug from whom the pharmaceutical sales representative received any prescription drug samples and the name of any person or entity listed under subsection (a)(1) to (4) to whom a sample was provided free of charge.

(e) On or before October 1 of each year, the department shall produce a report of the activities of pharmaceutical sales representatives described in this section. Information in the report shall be described in the aggregate and in a manner that does not reveal the identity of the person or entity.

The department shall:

(1) Post the report on its website; and

(2) Submit copies of the report to the governor and the legislature.

§ -8 **Nonprofit organization report.** (a) On or before February 1 of each year, a nonprofit organization operating in the State that advocates on behalf of diabetes patients or finances diabetes medical research shall report to the department any payment, donation, subsidy, or thing of value received from a:

(1) Manufacturer;

(2) Pharmacy benefit manager; or

(3) Lobbyist engaged by a manufacturer or pharmacy benefit manager,

in relation to the nonprofit organization's diabetes advocacy or research.

(b) The report shall include:

(1) The manufacturer, pharmacy benefit manager, or lobbyist that provided the payment, donation, subsidy, or other contribution and the amount; and

(2) The percentage of the total gross income of the nonprofit organization during the immediately preceding calendar year attributable to payments, donations, subsidies, or other contributions from each manufacturer, pharmacy benefit manager, or lobbyist.

The department shall make the reports required under this section publicly available on its website.

§ -9 **Rules; fines.** The department shall adopt rules, pursuant to chapter 91, necessary for the purposes of this chapter, including fines for noncompliance with the reporting requirements of this chapter."

SECTION 2. This Act shall take effect upon its approval.

INTRODUCED BY: _____

H.B. NO. 2668

Report Title:
Prescription Drugs; Diabetes; Reports

Description:
Requires the Department of Health to compile, analyze, and report certain information on essential prescription drugs marketed in the State for the treatment of diabetes. Requires certain entities to provide information that justifies cost increases in drug products.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.